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CERTIFICATE OF MAILING UNDER 37 CFR 1.8

Serial No.: 10/583,949
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Applicant: Michael Rosenbauer et al
Title: DISHWASHER WITH CONTROLLER DEVICE
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Appeal Brief (18 pages);
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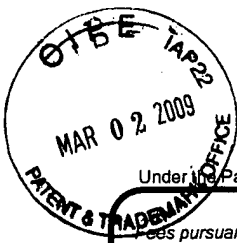
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FEE TRANSMITTAL

For FY 2009

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 540.00

Complete if Known

Application Number	10/583,949
Filing Date	03/29/2007
First Named Inventor	Michael Rosenbauer et al
Examiner Name	Samuel A. Waldbaum
Art Unit	1792
Attorney Docket No.	2003P01776WOUS

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 502786 Deposit Account Name: BSH Home Appliances Corp.

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	330	165	540	270	220	110	
Design	220	110	100	50	140	70	
Plant	220	110	330	165	170	85	
Reissue	330	165	540	270	650	325	
Provisional	220	110	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	52	26
Each independent claim over 3 (including Reissues)	220	110
Multiple dependent claims	390	195
Total Claims	Extra Claims	Fee (\$)
- 20 or HP = _____	x _____	= <u>52.00</u>
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims	Extra Claims	Fee (\$)
- 3 or HP = _____	x _____	= <u>220.00</u>
HP = highest number of independent claims paid for, if greater than 3.		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$270 (\$135 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 = _____	/ 50 = _____	(round up to a whole number) x _____	= _____	

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)	Fees Paid (\$)
Other (e.g., late filing surcharge): <u>Appeal Brief Fee</u>	<u>540.00</u>

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 39,715	Telephone 252-639-7644
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Attorney Docket No. 2003P01776WOUS

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Michael Rosenbauer et al
Application Number: 10/583,949
Filing Date: 03/29/2007
Group Art Unit: 1792
Examiner: Samuel A. Waldbaum
Title: DISHWASHER WITH CONTROLLER DEVICE

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellants hereby file an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 11-27 are pending in the present application and have been finally rejected. The final rejections of claims 11-27 are being appealed. Claims 11 and 26 are independent.

(4) STATUS OF AMENDMENTS

In response to the Final Rejection dated October 28, 2008, Appellants filed a Request for Reconsideration traversing the rejections. No Amendments are outstanding. The October 28, 2008, Office Action was responsive to an Amendment that was entered on July 25, 2008. Appellants filed a Notice of Appeal on January 28, 2009.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

A first exemplary embodiment, as defined by, for example, independent claim 11, is directed to a dishwasher (paragraphs [0001]; [0004]; [0005]; [0006]; [0008]; [0009]; [0012]; page 5, lines 2-3, 8, 13, 16, 20, and 23; page 6, lines 1, 5, 8, and 12; Figures 1-3, reference number 10) that includes a container for retaining items to be subjected to a dishwashing operation (paragraph [0005.1]; Figure 2, reference number 16), and a controller (paragraphs [0001]; [0004]; [0005.1]; [0006]; [0007]; [0008]; [0009]; [0010]; [0011]; [0012]; [0013]; [0014]; [0015]; page 5, lines 2, 8, 13, 16-18, 20-21, and 23-24; page 6, lines 1-2, 5-6, 8-9, 12-13; Figure 3, reference number 14) for one of controlling an operating function effecting a switching on of the dishwasher (paragraph [0006]; page 5, line 2), controlling an operating

function effecting a switching off of the dishwasher (paragraph [0006]; page 5, line 2), and selecting operational functions of the dishwasher (paragraph [0006]; page 5, lines 2-3), and the controller including a touch-sensitive surface (paragraphs [0005.1]; [0006]; [0007]; [0008]; [0009]; [0010]; [0011]; [0014]; page 5, lines 4-5, 8-9, 14, 17, and 24; page 6, lines 2, 6, 9-10, and 13; Figure 3) with switching functions allocated to an operating function (paragraphs [0006]; [0008]; page 5, lines 4-5). The switching function of the touch-sensitive surface is actuatable by relatively light touching contact and the relevant operating function is thereby respectively switched off, switched on, or selected (paragraphs [0006]; [0007]).

Claim 12 depends from claim 11 and is directed to a dishwasher wherein the touch-sensitive surface of the controller reacts to a change in an electromagnetic field (paragraph [0006]).

Claim 24 depends from claim 11 and is directed to a dishwasher wherein the touch-sensitive surface is controllably illuminated in steps (paragraph [0013]).

A second exemplary embodiment, as defined by, for example, independent claim 26 is directed to a dishwasher (paragraphs [0001]; [0004]; [0005]; [0006]; [0008]; [0009]; [0012]; page 5, lines 2-3, 8, 13, 16, 20, and 23; page 6, lines 1, 5, 8, and 12; Figures 1-3, reference number 10) that includes a controller (paragraphs [0001]; [0004]; [0005.1]; [0006]; [0007]; [0008]; [0009]; [0010]; [0011]; [0012]; [0013]; [0014]; [0015]; page 5, lines 2, 8, 13, 16-18, 20-21, and 23-24; page 6, lines 1-2, 5-6, 8-9, 12-13; Figure 3, reference number 14) that controls the operation of the dishwasher, and a touch-sensitive user interface in communication with the controller (paragraphs [0005.1]; [0006]; [0007]; [0008]; [0009]; [0010]; [0011]; [0014]; page 5, lines 4-5, 8-9, 14, 17, and 24; page 6, lines 2, 6, 9-10, and 13; Figure 3) that is responsive to a change in an electromagnetic field (paragraph [0006]).

Claim 27 depends from claim 26 and is directed to a dishwasher wherein the user-interface is controllably illuminated in steps (paragraph [0013]).

In contrast to the conventional dishwasher, an exemplary embodiment of the claimed invention includes a controller with a touch-sensitive surface that is actuatable by relatively

light touching contact (claim 11); and a touch-sensitive user interface in communication with the controller that is responsive to a change in an electromagnetic field (claim 26). In this manner, the present invention improves ease of operation and is relatively unaffected by wear and contamination.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A) Whether claims 11 and 13 are unpatentable under 35 U.S.C. § 102(b) over U.S. Patent No. 2,604,761 (the Oyler, et al. reference)
- B) Whether claims 12 and 26 are unpatentable under 35 U.S.C. § 103(a) over the Oyler et al. reference in view of U.S. Patent Publication 2001/0016881 (the Kavanaugh et al. reference)
- C) Whether claims 14 and 17-25 are unpatentable under 35 U.S.C. § 103(a) over the Oyler et al. reference in view of U.S. Patent No. 5,995,877 (the Brueggemann et al. reference)
- D) Whether claims 15 and 21 are unpatentable under 35 U.S.C. § 103(a) over the Oyler et al. reference in view of the Brueggemann et al. reference and in further view of U.S. Patent No. 2,791,050 (the Neugass reference)
- E) Whether claims 16 and 22 are unpatentable under 35 U.S.C. § 103(a) over the Oyler et al. reference in view of U.S. Patent Publication 2003/0205954 (the Anderson et al. reference) and in further view of the Neugass reference
- F) Whether claim 27 is unpatentable under 35 U.S.C. § 103(a) over the Oyler et al. reference in view of the Kavanaugh et al. reference and in further view of the Brueggemann et al. reference

(7) ARGUMENT

- A) Claims 11 and 13 are patentable under 35 U.S.C. § 102(b) over U.S. Patent No. 2,604,761 to Oyler, et al.

The Office Action rejects claims 11 and 13 under 35 U.S.C. § 102(b) as allegedly being unpatentable over the Oyler et al. reference. Appellants respectfully traverse this rejection.

None of the applied references teaches or suggests the features of the claimed invention including a controller with a touch-sensitive surface that is actuable by relatively light touching contact. As explained above, this feature is important for improving ease of operation and reducing wear and contamination.

Rather, the Oyler et al. reference discloses a control panel 66 that includes an electronic membrane switch assembly. As pointed out by the Oyler et al. reference such membrane switches are well known. Membrane switches require the use of a substrate that flexes under pressure in order to contact another underlying substrate. In other words, a user of a membrane switch must exert pressure on the touch surface in order to cause the substrate to flex and actuate.

In stark contrast, an exemplary embodiment of the present invention is actuable merely by relatively light touching contact. In other words, no pressure needs to be exerted at all by the user.

The Office Action attempts to avoid providing patentable weight to a structural feature of the claim, merely because such structural feature is described using functional language. There is nothing inherently wrong with defining some part of an invention in functional terms. A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in which it is used. (M.P.E.P. § 2173.05(g)). In the present instance, the claim requires a touch-sensitive surface having a structure which is actuable by a relatively light touching contact. The failure by the Patent Office to provide this feature with patentable weight is improper.

Appellants respectfully request reversal of this rejection.

B) Claims 12 and 26 are patentable under 35 U.S.C. §103(a) over the Oyler et al. reference in view of the Kavanaugh et al. reference

The Office Action rejects claims 12 and 26 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Oyler et al. reference in view of the Kavanaugh et al. reference.

Appellants respectfully traverse this rejection.

The Office Action admits that the Oyler et al. reference does not teach or suggest the features of the claimed invention including a touch-sensitive user interface in communication with the controller that is responsive to a change in an electromagnetic field. The Office Action relies upon the Kavanaugh et al. reference in an attempt to remedy the deficiencies of the Oyler et al. reference.

The Kavanaugh et al. reference appears to disclose a wallet for a personal information device which may include a touchpad 80 which is based upon electrical capacitance and which does not require pressure or direct contact.

The Office Action alleges that it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the touch controller of the Kavanaugh et al. reference in the dishwasher door assembly that is disclosed by the Oyler et al. reference “to have yield the predictable result of controlling the user selected functions as the user touches the controller.” Appellants respectfully submit that such a conclusory statement is insufficient to provide a *prima facie* case for obviousness because the Office Action fails to provide an adequate rationale for combining the art as required by KSR International v. Teleflex Inc. 82 U.S.P.Q.2d 1385 (2007).

“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness.” (In re Kahn, 441 F.3d 977, 988 (CA Fed. 2006) cited with approval in KSR.)

The Office Action simply provides absolutely no hint of any articulated reasoning with any rationale underpinning to support a legal conclusion of obviousness. As such, the Office Action fails to present a *prima facie* case for obviousness.

The Office Action has provided no articulated reasoning to combine the teachings and suggestions of the Oyler et al. reference with the Kavanaugh et al. reference to arrive at the claimed invention, except from using Appellants' own invention and disclosure as a template and through hindsight reconstruction of Appellants' claims.

Moreover, Appellants respectfully submit that one of ordinary skill in the art would not have combined the teachings of the Kavanaugh et al. reference with the Oyler et al. reference because the references are directed to completely different and unrelated problems and, as such, it would not have occurred to one of ordinary skill in the art to combine them, (i.e. there is no rationale to combine nor would it have been predictable to do so).

The Oyler et al. reference is concerned with the problem of providing an escutcheon that is separately molded from the remainder of the dishwasher door and, therefore, increasing the complexity of assembly and the cost of manufacture.

In stark contrast, the Kavanaugh et al. reference is directed to the completely different and unrelated problem of electronic devices becoming smaller in size which adversely impacts their ease of operation due to, for example, reduced-sized keys, reduced-size displays and/or reduced number of keys.

One of ordinary skill in the art who was concerned with the problem of providing an escutcheon that is separately molded from the remainder of the dishwasher door and, therefore, increasing the complexity of assembly and the cost of manufacture of a dishwasher as the Oyler et al. reference is concerned would not have referred to the Kavanaugh et al. reference, and vice-versa, because the Kavanaugh et al. reference is directed to the completely different and unrelated problem of electronic devices becoming smaller in size which adversely impacts their ease of operation due to, for example, reduced-sized keys, reduced-size displays and/or reduced number of keys. Thus, these references do not include inter-

related teachings that would provide one of ordinary skill in the art with an apparent reason to combine these references.

Appellants respectfully submit that a person of ordinary skill in the art having common sense at the time of the invention would not have reasonably looked to the Kavanaugh et al. reference to solve a problem that is already solved by the Oyler et al. reference and vice-versa. In fact, it would have been common sense to NOT combine the applied references as alleged by the Examiner.

Appellants respectfully request withdrawal of this rejection.

C) Claims 14 and 17-25 are patentable under 35 U.S.C. § 103(a) over the Oyler et al. reference in view of the Brueggemann et al. reference

The Office Action rejects claims 14 and 17-25 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Oyler et al. reference in view of the Brueggemann et al. reference. Appellants respectfully traverse this rejection.

None of the applied references teaches or suggests the features of the claimed invention including a controller with a touch-sensitive surface that is actuable by relatively light touching contact as recited by independent claim 11. This feature is important for improving ease of operation and reducing wear and contamination.

As explained above, the Oyler et al. reference clearly does not teach or suggest this feature.

The Brueggemann et al. reference does not remedy the deficiencies of the Oyler et al. reference.

Rather, the Brueggemann et al. reference discloses using “pressure-sensitive sensors 4, i.e. piezosensors 4” (col. 2, lines 64-65). Piezosensors require the application of pressure in order to actuate, thus, the term “pressure-sensitive.”

In stark contrast, an exemplary embodiment of the present invention is actuatable merely by relatively light touching contact. In other words, no pressure needs to be exerted at all by the user.

Additionally, none of the applied references teaches or suggests the features of the claimed invention, as recited by, for example, dependent claim 12 including a touch-sensitive surface of a controller that reacts to a change in an electromagnetic field.

Indeed, the Office Action does not allege that any of the applied references teaches or suggests this feature.

Further, none of the applied references teaches or suggests the features of the claimed invention including a controller with a touch-sensitive surface that is controllably illuminated in steps as recited by claims 24 and 27. The Office Action cites column 3, line 1 – column 4, line 45 of the Brueggemann et al. reference in an attempt to support the allegation that the Brueggemann et al. reference discloses this feature. However, contrary to this allegation, column 3, line 1 – column 4, line 45 does not teach or suggest anything at all regarding controllably illuminating a touch-sensitive surface in steps as recited by claims 24 and 27.

Appellants respectfully request reversal of this rejection.

D) Claims 15 and 21 are patentable under 35 U.S.C. § 103(a) over the Oyler et al. reference in view of the Brueggemann et al. reference and in further view of the Neugass reference

The Office Action rejects claims 15 and 21 under 35 U.S.C. § 103(a) under 35 U.S.C. §103(a) as allegedly being unpatentable over the Oyler et al. reference in view of the Brueggemann et al. reference and in further view of the Neugass reference. Appellants respectfully traverse this rejection.

None of the applied references teaches or suggests the features of the claimed invention including a controller with a touch-sensitive surface that is actuatable by relatively

light touching contact as recited by independent claim 11. This feature is important for improving ease of operation and reducing wear and contamination.

As explained above, the Oyler et al. reference and the Brueggemann et al. reference does not teach or suggest this feature.

The Neugass reference does not remedy the deficiencies of the Oyler et al. reference and the Brueggemann et al. reference.

Indeed, the Office Action does not allege that the Neugass reference teaches or suggests this feature.

Appellants respectfully request reversal of this rejection.

E) Claims 16 and 22 are patentable under 35 U.S.C. § 103(a) over the Oyler et al. reference in view of the Anderson et al. reference and in further view of the Neugass reference

The Office Action rejects claims 16 and 22 under 35 U.S.C. § 103(a) under 35 U.S.C. §103(a) as allegedly being unpatentable over the Oyler et al. reference in view of the Anderson et al. reference and in further view of the Neugass reference. Appellants respectfully traverse this rejection.

None of the applied references teaches or suggests the features of the claimed invention including a controller with a touch-sensitive surface that is actuable by relatively light touching contact as recited by independent claim 11. This feature is important for improving ease of operation and reducing wear and contamination.

As explained above, the Oyler et al. reference and the Neugass reference does not teach or suggest this feature.

The Anderson et al. reference does not remedy the deficiencies of the Oyler et al. reference and the Neugass reference.

Indeed, the Office Action does not allege that the Anderson et al. reference remedies these deficiencies.

Appellants respectfully request reversal of this rejection.

- F) Claim 27 is patentable under 35 U.S.C. § 103(a) over the Oyler et al. reference in view of the Kavanaugh et al. reference and in further view of the Brueggemann et al. reference

The Office Action rejects claim 27 under 35 U.S.C. § 103(a) under 35 U.S.C. §103(a) as allegedly being unpatentable over the Oyler et al. reference in view of the Kavanaugh et al. reference and in further view of the Brueggemann et al. reference. Appellants respectfully traverse this rejection.

As explained above, the Office Action again fails to present a *prima facie* case for obviousness by failing to provide an adequate rationale for combining the art as required by KSR International v. Teleflex Inc. 82 U.S.P.Q.2d 1385 (2007).

Further, one of ordinary skill in the art at the time the invention was made would not have combined the Brueggemann et al. reference with the Oyler et al. reference and the Kavanaugh et al. reference because the references are directed to completely different and unrelated problems and, as such, it would not have occurred to one of ordinary skill in the art to combine them, (i.e. there is no rationale to combine nor would it have been predictable to do so).

The Brueggemann et al. reference is concerned with the problem of household appliance control surfaces having perforations which make the surfaces difficult to clean.

One of ordinary skill in the art who was concerned with the problem of providing an escutcheon that is separately molded from the remainder of the dishwasher door and, therefore, increasing the complexity of assembly and the cost of manufacture of a dishwasher as the Oyler et al. reference is concerned or who was concerned with the problem of electronic devices becoming smaller in size which adversely impacts their ease of operation due to, for example, reduced-sized keys, reduced-size displays and/or reduced number of keys as the Kavanaugh et al. reference was concerned would not have referred to the Brueggemann et al.

reference, and vice-versa, because the Brueggemann et al. reference is directed to the completely different and unrelated problem of household appliance control surfaces having perforations which make the surfaces difficult to clean. Thus, these references do not include inter-related teachings that would provide one of ordinary skill in the art with an apparent reason to combine these references.

Appellants respectfully submit that a person of ordinary skill in the art having common sense at the time of the invention would not have reasonably looked to the Brueggemann et al. reference to solve a problems that are already solved by the Oyler et al. reference and the Kavanaugh et al. reference and vice-versa. In fact, it would have been common sense to NOT combine the applied references as alleged by the Examiner.

Appellants respectfully request withdrawal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejection.

Respectfully submitted,



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February 26, 2009

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CLAIMS APPENDIX

1-10. (Cancelled)

11. (Rejected) A dishwasher, comprising:

a container for retaining items to be subjected to a dishwashing operation; and
a controller for one of controlling an operating function effecting a switching on of the dishwasher, controlling an operating function effecting a switching off of the dishwasher, and selecting operational functions of the dishwasher, the controller including a touch-sensitive surface with switching functions allocated to an operating function, wherein the switching function of the touch-sensitive surface is actuable by relatively light touching contact and the relevant operating function is thereby respectively switched off, switched on, or selected.

12 (Rejected) The dishwasher according to claim 11, wherein the touch-sensitive surface of the controller reacts to a change in an electromagnetic field.

13. (Rejected) The dishwasher according to claim 11, wherein the controller includes touch-sensitive surfaces with switching functions, each being allocated an operating function.

14. (Rejected) The dishwasher according to claim 11, wherein the touch-sensitive surface of the controller has a flat surface that is disposed substantially in the same plane as the surface in which the controller is located on the dishwasher in a selected one of flush disposition of an end of the flat surface with the surface in which the controller is located on the dishwasher and a non-flush disposition of an end of the flat surface with the surface in which the controller is located on the dishwasher.

15. (Rejected) The dishwasher according to claim 11, wherein the viewing surface of the controller is made at least partly of a transparent material.
16. (Rejected) The dishwasher according to claim 11, wherein the touch-sensitive surface of the controller is covered at least partly by a transparent film.
17. (Rejected) The dishwasher according to claim 11, wherein the touch-sensitive surface of the controller is covered at least in part by a flexible metal film.
18. (Rejected) The dishwasher according to claim 11, wherein the touch-sensitive surface of the controller is controllably illuminated by a lamp.
19. (Rejected) The dishwasher according to claim 11, wherein the touch-sensitive surface of the controller is only illuminated by a lamp when the operating function allocated to the touch-sensitive surface is selected or switched on.
20. (Rejected) The dishwasher according to claim 11, wherein the touch-sensitive surface of the controller is back-illuminated by a plurality of lamps.
21. (Rejected) The dishwasher of claim 15, wherein the surface of the controller comprises a matt-finished material.
22. (Rejected) The dishwasher of claim 16, wherein the transparent film comprises a plastic.
23. (Rejected) The dishwasher of claim 17, wherein the flexible metal film comprises lettering that identifies an operating function of the touch-sensitive surface.

24. (Rejected) The dishwasher of claim 18, wherein the touch-sensitive surface is controllably illuminated in steps.
25. (Rejected) The dishwasher of claim 20, wherein the plurality of lamps comprises a plurality of differently-colored light-emitting diodes.
26. (Rejected) A dishwasher comprising:
a controller that controls the operation of the dishwasher; and
a touch-sensitive user interface in communication with the controller that is responsive to a change in an electromagnetic field.
27. (Rejected) The dishwasher of claim 26, wherein the user-interface is controllably illuminated in steps.

EVIDENCE APPENDIX

None

RELATED APPEALS APPENDIX

None